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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA

Case No. 09-cr-40-1-BR

v.

HAROLD JAMES NICHOLSON,

Defendant.

**GOVERNMENT'S SENTENCING
MEMORANDUM**

Sentencing Date: January 18, 2011

The United States of America, by Dwight C. Holton, United States Attorney for the District of Oregon, and Pamala R. Holsinger and Ethan D. Knight, Assistant United States Attorneys, respectfully submits this memorandum for defendant's sentencing which is currently set for Tuesday, January 18, 2011 at 1:30 p.m.

On November 8, 2010, defendant entered a guilty plea pursuant to Fed. R. Crim. P. 11(c)(1)(C) to Count 1 of the Indictment, charging Conspiracy to Act as an Agent of a Foreign Government Without Prior Notification to the Attorney General, and Count 3, charging Conspiracy to Commit Money Laundering. The parties are urging the Court to accept the binding plea agreement and sentence defendant to 96 months' imprisonment, consecutive to the 283-month prison sentence defendant is currently serving in connection with his earlier espionage conviction. Based on the information set forth below, the parties contend that this resolution is reasonable, is grounded in the advisory guidelines, and takes into account the factors in Title 18 U.S.C. § 3553(a).

I. Factual Background

The government concurs with the detailed description of the Offense Conduct in paragraphs 20 through 61 of the Presentence Report and the Statement of Facts in Support of the Plea Agreement agreed to by defendant and filed in support of defendant's plea agreement on November 8, 2010.

II. Advisory Sentencing Guidelines and Factors Set Forth in 18 U.S.C. § 3553

The government and defendant agree with the Presentence Report that the Total Offense Level is 41 (42 for money laundering with cross reference to espionage, plus 2 for conviction under 18 U.S.C. § 1956, minus 3 for acceptance of responsibility), defendant's Criminal History is III, and the resulting guideline range is 360 months to life. However, because of the statutory maximum of 240 months on Count 3 and 60 months on Count 1, the resulting sentencing range would be capped at 300 months.

The 96-month jointly-recommended sentence is well grounded in the advisory sentencing guidelines. First, the guideline range is based upon the money laundering guidelines in U.S.S.G.

§ 2S1.1. This guideline cross-references to the guideline of the underlying specified unlawful activity, which in this case is espionage under U.S.S.G. § 2M3.1. This produces a guideline offense level after acceptance of 41.

Second, the parties contend that sentencing the current case at level 41 would not be appropriate. Defendant is already serving a 283-month prison sentence for espionage. His current offense is essentially a continuation of that offense, because it involves collection of the proceeds (money laundering) from his past espionage activity. Thus, to sentence the current offense as if it were a new espionage offense does not seem to be what the guidelines intend. The 8-year consecutive sentence takes into account the “overlap” of the prior conviction with the current guideline calculation.

Third, U.S.S.G. § 5G1.3(b), although not directly applicable, provides analogous authority for the proposed adjustment. It permits adjusting a term of imprisonment when another offense is relevant conduct to the instant offense of conviction, and when there is an undischarged term of imprisonment that will not be credited to defendant’s current sentence.

Fourth, the parties have considered extensively the statutory sentencing factors in 18 U.S.C. § 3553(a). The § 3553(a) factors include the defendant’s history and characteristics, the nature and seriousness of the offense, the need to provide just punishment and adequate deterrence, the need to promote respect for the law, and the need to protect the public from further crimes committed by the defendant. 18 U.S.C. § 3553(a)(1)–(2). The nature and circumstances of the offense and the history and characteristics of the defendant are extraordinarily complicated in this case. The facts involve defendant’s continued attempts to obtain money from the Russian Federation for his past espionage activity, even while being closely monitored and scrutinized in prison. The facts indicate

defendant was not deterred by his previous conviction and significant incarceration. Defendant's unconscionable conduct in this case began by involving his youngest son Nathaniel, who was twelve years old when defendant went to prison, in his plan to obtain money from the Russian Federation. The consecutive 8-year sentence reflects the seriousness of the offense, provides a just punishment, will afford adequate deterrence and will protect the public from defendant's further crimes.

III. Disparity in Sentencing of Codefendant is Warranted.

The disparity between defendant's 8-year consecutive sentence and his codefendant son Nathaniel's five-year sentence of probation is appropriate and warranted. Nathaniel Nicholson's cooperation against his father was very early and extraordinary. It included the likelihood that Nathaniel would have to testify against his father, a person Nathaniel has had an extremely close and loyal relationship with since a child. Nathaniel was twelve years old when defendant was convicted of espionage and sentenced to 23 years in federal prison. Defendant, a trained CIA officer, used his skills to groom and manipulate his own son over the course of his young life to carry out defendant's plan for financial gain. Defendant had significant emotional power over Nathaniel. He groomed his son to worship him and be loyal, and he used scriptural and biblical references to build up Nathaniel's confidence to carry out his scheme. Nathaniel was ultimately able to overcome defendant's concerted efforts to manipulate him, agreeing to cooperate and testify against his father. Without defendant's contacts and relationship with the Russian Federation, Nathaniel could not have committed the crime on his own. Defendant deserves a more severe sentence for his crimes.

IV. Government's Sentencing Recommendation

The government is requesting the Court accept the plea agreement in this case and sentence defendant to 60 months' imprisonment on Count 1 and 96 months' imprisonment on Count 3 to be

served concurrently with Count 1, with both Counts 1 and 3 to be served consecutively to the undischarged term in United States District Court for the Eastern District of Virginia Case No. 96-448-A, followed by a three-year term of supervised release subject to the conditions set forth in the Presentence Report.

A sentence of 96 months to be served consecutively to the 283-month prison sentence defendant is currently serving for espionage, followed by a three-year term of supervised release, is a reasonable sentence for this defendant. It accounts for the nature and seriousness of the offense, provides punishment, promotes respect for the law, acts as a deterrent, protects the public, and creates an entirely warranted sentencing disparity with his codefendant, Nathaniel Nicholson.

DATED this 12th day of January 2011.

Respectfully submitted,

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United States Attorney

/s/ Pamala R. Holsinger
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